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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES:

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission resolution 1995/73

Addendum

Report of the Special Rapporteur on his mission to Burundi from 19 to 29 April 1995

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Introduction

1. The Special Rapporteur on extrajudicial, summary or arbitrary executions, deeply alarmed by the gravity of violations of the right to life which had allegedly occurred in Burundi after the coup d'état of October 1993, requested, by letter of 17 December 1993, permission to visit the country. An invitation to this effect was extended to him on 17 January 1994. Initially, the Special Rapporteur had intended to visit Burundi during the first half of 1994, together with the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng. While the visit of the Representative of the Secretary-General took place from 30 August to 4 September 1994 (see E/CN.4/1995/50/Add.2), the Special Rapporteur did not take part in that mission. Two events were decisive in the Special Rapporteur's postponement of an extensive and specific visit to Burundi:

(a) The grave situation in Rwanda compelled the Special Rapporteur to modify his agenda for 1994. In June 1994, he accompanied the Special Rapporteur on the situation of human rights in Rwanda, Mr. René Degni Segui, to Rwanda and Burundi. During his short visit to Burundi, the Special Rapporteur on extrajudicial, summary or arbitrary executions received significant information concerning the situation of human rights in that country which confirmed that violations of the most fundamental human rights were continuing to occur, despite the efforts of the international community to achieve a climate of dialogue, peace and security.

(b) The decision of the Secretary-General, at the request of the Minister of State for Foreign Affairs and Cooperation of Burundi, to send a fact-finding mission to Burundi, in March-April 1994, to investigate the coup d'état of 21 October 1993, 1/ the assassination of President Melchior Ndadaye and the subsequent massacres.

2. Early in 1995, the Special Rapporteur decided to undertake a mission to Burundi as soon as the circumstances would permit, taking into account the prevailing political crisis, the escalation of violence and the deterioration of the human rights situation there. This decision followed a suggestion made by the High Commissioner for Human Rights to the Special Rapporteur to this effect. On 8 March 1995, the Commission on Human Rights, adopted, without a vote, resolution 1995/90, entitled "Situation of human rights in Burundi", in paragraph 13 of which it applauded the decision taken by the Special Rapporteur, in close consultation with the High Commissioner for Human Rights, to undertake immediately a mission to Burundi as part of his mandate.

I. PROGRAMME OF THE VISIT

3. The Special Rapporteur visited Burundi from 19 to 29 April 1995 in the framework of the mandate entrusted to him by the Commission on Human Rights (see E/CN.4/1995/61, paras. 4-8) in order to gather more information about violations of the right to life which occurred in particular after the coup d'état of October 1993 and which have continued, to a lesser extent, to this date. During his mission, the Special Rapporteur spent several days in Bujumbura and undertook three visits in the interior of the country, to the provinces of Muyinga, Kayanza and Ngozi.

4. The Special Rapporteur met with the following authorities: the President of the Republic, the Prime Minister, the President of the National Assembly, the Minister for External Relations and Cooperation, the Minister of Reintegration and Resettlement of Displaced Persons and Returnees, the Secrétaire Général du Gouvernement, the Secrétaire d'Etat à la Sécurité, the Chef du Cabinet du Ministère de l'Intérieur, the President of the Supreme Court, the Procureur Général de la République, the Auditeur Général Militaire. The Special Rapporteur also held meetings with senior military and police authorities, including the Chief of Staff of the Army, the Commandant des Ecoles et Centres d'Instruction and the Directeur du Cabinet de la Documentation. During his visits to the provinces, he met with the military commanders, as well as with governors. The Special Rapporteur also held consultations with former Presidents Pierre Buyoya and Jean Baptiste Bagaza, and with Adrien Sibomana, Prime Minister under President Buyoya's regime.

5. The Special Rapporteur had talks with representatives of political parties: Jean Minani, President of the Burundi Democratic Front (Front pour la démocratie au Burundi) (FRODEBU), Charles Mukasi, President of the Union pour le progrès national (Party of Unity and National Progress) (UPRONA) and, at his request, with Mathias Hitimana, President of the royalist party, Parti pour la reconciliation du peuple (Party for the Reconciliation of the People) (PRP).

6. During the mission, the Special Rapporteur held in-depth consultations with the Special Representative of the Secretary-General to Burundi, representatives of the Organization of African Unity (OAU) observer mission, the Coordinator of the Centre for Human Rights in Bujumbura, as well as with representatives of United Nations bodies and agencies, including UNICEF, UNDP, UNHCR, WFP, UNESCO and WHO, and with the delegate of the International Committee of the Red Cross (ICRC). Meetings were also organized with the heads of the diplomatic missions of Belgium, Egypt, France, Germany, the United States of America and the European Union.

7. The Special Rapporteur had numerous talks with representatives of non-governmental organizations including the Iteka League, the Sonera League and Sodegem, as well as with representatives of various newspapers, university student associations and churches. He held meetings with Médecins sans frontières - Belgique, the President of the Commission National Technique chargée de préparer le Débat National sur les problèmes fondamentaux du pays (the national technical commission responsible for preparing the national debate on the fundamental problems of the country), and the President of the Bar Association. He also visited a youth centre in the suburb of Kamenge which is promoting, through cultural, educational and sport programmes the better integration of young people from both ethnic groups into society. These programmes aim at teaching them how to live together peacefully.

8. During his field trips to Kayanza, Ngozi and Muyinga, he visited the Ntamba and Magara refugee camps and the Mukoni and Muhanga camps for internally displaced persons. He also visited the suburbs of Bwiza and Buyenzi, as well as Gatumba, a camp for internally displaced persons close to Bujumbura. A visit to the Hutu suburb of Kamenge, in Bujumbura, took place three days after violent confrontations with the army caused the death of at least 24 persons. During his visit, the Special Rapporteur met with a number

of witnesses to violations of the right to life, as well as relatives of victims. He also received testimony from persons who had been subjected to death threats and acts of intimidation and harassment. Before leaving Burundi, the Special Rapporteur held a press conference during which he informed the press about his mandate and explained the task entrusted to him by the Commission on Human Rights and the objectives of his mission.

9. The Special Rapporteur would like to thank the Government of Burundi for the cooperation and assistance extended to him at all times during his visit. He particularly appreciated the assistance and availability of State authorities. In addition, the Special Rapporteur is most grateful to all intergovernmental and non-governmental organizations and individuals who provided him with information on the situation of the right to life in Burundi. Particular thanks are extended to the Representative of the Secretary General and his collaborators, the OAU International Observers Mission in Burundi, and the office of the Centre for Human Rights in Bujumbura for invaluable assistance in coordinating the programme of meetings of the Special Rapporteur's visit and for the logistical support given to him during the mission.

II. BACKGROUND AND CONTEXT

10. The Republic of Burundi, a landlocked Central African State, is 27,830 Km² in area and shares borders with Rwanda, Tanzania and Zaire. It has a population of approximately 6,124,747, the majority concentrated in rural areas. At an average of 200 people per Km², it is the second most densely populated country in Africa, after Rwanda. Burundi is predominantly an agrarian economy; as much as 90 per cent of the population is dependent on subsistence farming. The official languages are Kirundi and French, but Swahili is also spoken, specifically along Lake Tanganyka and in the Bujumbura area. Some 62 per cent of the population is Roman Catholic, 5 per cent Protestant and 1 per cent Muslim.

11. Since its independence in 1962, Burundi has been the theatre of cyclical insurrections and massacres. The most tragic events occurred in 1965, 1972, 1988 and 1991. The coup d'état of October 1993 plunged Burundi into the present political and social turmoil. Ethnic violence has caused thousands of victims and led to a precarious situation which threatens the stability of the whole region. The struggle for political power, impunity and the lack of effective administration of justice are the main factors underlying this turmoil. Mass media which incite racial hatred, the proliferation of Tutsi militia and Hutu armed groups, as well as the regional reverberations of the events in Rwanda in 1994, have further exacerbated the climate of violence, fear and mistrust.

A. Social status and ethnicity

12. The inhabitants of Burundi generally share the same language, culture, traditions and social organization. Although there is no record of any systematic study of ethnic distribution in Burundi, according to statistics dating back to the 1930s, 84 per cent of the population are Hutu, 14 per cent

Tutsi and 1 per cent Twa. These figures certainly involve distortions, they do not cover the demographic readjustments resulting from the massacres and mass exoduses from 1965 to 1993, yet they afford a general picture.

13. Social stratification in Burundi is based primarily upon a class or caste system, rather than rigid ethnic differentiation. Thus "Tutsi" signifies a social superior, whilst "Hutu" signifies a social subordinate; hence a prince was a Hutu in relation to the king. Today, the term "Hutu" describes the majority ethnic group, which is lower class and politically and economically marginalized, whilst "Tutsi" denotes a minority ethnic group, which dominates political and economic power. However, this close class and ethnic correlation was in the past dynamic and fluid: social mobility occurred and even now coexistence and intermarriage have resulted in a certain intertwining of the two groups. From a geographical perspective, the two ethnic groups live inextricably mingled, generally sharing, throughout the whole territory, the same collines (hills).

14. Although ethnic awareness existed in precolonial times, it did not create problems of cohabitation between the different ethnic groups. However, colonial political favouritism towards the Tutsi minority placed the Hutu in an economically and socially marginalized position whilst members of the Tutsi ethnic group gained high governmental, professional and social positions. Hence the situation in Burundi has at times been described as one of "de facto apartheid" against the Hutu. In practice, Hutus have been excluded from education, government, the administration, the judiciary and the army. Therefore, it should be strongly emphasized that ethnicity as such is not the main factor in the conflict. Rather, the violence is rooted in the artificial ethnic boundaries and the discriminatory structuring of power introduced by the former colonial rulers and later used as a tool to gain access to or maintain political power.

B. Brief political history 2/

15. Prior to being colonized, Burundi was a well organized, hierarchical, feudal kingdom, power being concentrated in the hands of the king, or Mwami. During colonization (first by Germany, 1889-1918, then Belgium 1919-1962) some progress towards democracy was made when political parties were created in the late 1950s. However, political instability and violence began when, one month after the legislative elections of 1961, the Prime Minister designate, Prince Rwagasore, was assassinated.

16. Violence erupted again in 1965, when an estimated 500 Tutsis and 2,000 Hutus were killed, and again following the elections of 1966. On 28 November 1966 the first coup d'état took place. Captain Michel Micombero, a Tutsi from Bururi province, overthrew the monarchy and declared the first Republic. After a coup attempt in April 1972, an estimated 100,000 to 200,000 Hutus were killed and 300,000 sought refuge in Rwanda, Tanzania and Zaire.

17. A second coup d'état took place on 1 November 1976, when Colonel Jean Baptiste Bagaza, also a Tutsi from Bururi province, seized power and declared the second Republic. During his 11-year reign, authoritarian rule was

intensified and systematic discrimination against Hutus was reinforced. He was deposed in September 1987 when Major Pierre Buyoya, also a Tutsi from Bururi province, seized power and became President.

18. During Major Buyoya's rule, attempts were made to reconcile the people of Burundi, particularly after the eruption of violence in 1988 in Ntega commune in Kirundo, and Marangara commune in Ngozi, which caused thousands of casualties among Hutu civilians, and forced 60,000 people to flee to Rwanda. Adrien Sibomana, a Hutu, was appointed Prime Minister, and a cabinet with equal proportions of Hutu and Tutsi was designated. In October 1988, a national commission, composed of 12 Hutus and 12 Tutsis, was established to study the question of national unity. Its report, published in April 1989 led to the drafting of a charter of national unity, a bill of rights banning discrimination and insisting on the need for a "spirit of national unity". Following its approval by referendum of February 1991, many Hutus gained access to state institutions, although the army continued to remain under Tutsi control. In April 1992, the promulgation of a decree-law on political parties led to the introduction of a multi-party political system.

19. Presidential and parliamentary elections took place on 1 and 29 June 1993, respectively. The struggle for power was between the Burundi Democratic Front (FRODEBU), and the party of Unity and National Progress (UPRONA). President Buyoya (UPRONA) was defeated by Melchior Ndadaye (FRODEBU), who became the first Hutu ever elected President, marking the end of 31 years of Tutsi domination and radically changing the political landscape of Burundi. Although President Buyoya accepted the defeat, other UPRONA militants reacted negatively. A first attempted coup d'état took place on 3 July 1993.

20. President Ndadaye appointed a Tutsi woman, Ms. Sylvie Kinigi, as Prime Minister, and 40 per cent of ministerial posts were allocated to the opposition. However, the changes proposed by the newly-elected Government, such as reorganization of central and local administration, as well as plans to reform the military, were disliked by powerful groups who saw their interests threatened.

C. Political developments since the coup d'état of October 1993

21. On 28 October 1993, Tutsi paratroopers overthrew President Ndadaye. He and members of his cabinet and other senior government officials were assassinated. Intensive intercommunal fighting broke out, affecting in particular the provinces of Ngozi, Bubanza and Kirundo. It is estimated that some 50,000 people were killed and a further 700,000 fled to Rwanda, Tanzania and Zaire, or were dispersed within Burundi. Devastation and destruction ensued.

22. The murder of President Ndadaye provoked a constitutional crisis because of the simultaneous assassination of the President of the National Assembly, who, under article 85 of the Constitution, should have become President of the Republic until an election could take place. This crisis was resolved when, on 13 January 1994, the National Assembly, after approving a constitutional amendment to article 85, elected a Hutu, Cyprien Ntaryamira (FRODEBU) as President. Violence erupted in Bujumbura when Tutsi opposition members

reportedly organized "dead city days" (during which all activities are paralysed), setting up barricades and starting fires, during which 200 casualties were reported. 3/ Nevertheless, the new President and Government were installed in early February 1994 following the "Kajaga Agreement" under which a Tutsi Prime Minister (Anatole Kanyenkiko) was appointed and 40 per cent of ministerial posts were allocated to the opposition.

23. The crisis worsened when, on 6 April 1994, President Ntaryamira was killed along with the President of Rwanda when their plane was shot down in Kigali. After extensive deliberations, a power-sharing agreement (the "Convention on Governance") was reached on 10 September 1994, whereby Sylvestre Ntibantunganya, then President of the National Assembly, was confirmed as interim President of the Republic until elections would take place four years later, the proportion of government posts allocated to the opposition was increased to 45 per cent, and the powers of the National Security Council, which is to be consulted in major presidential decisions, were extended. The National Security Council is composed of the President of the Republic; the Prime Minister; the Minister for External Relations and Cooperation; the Minister of the Interior and Public Security; the Minister of Defence; a representative of the Partis des Forces de changement démocratique; a representative of the opposition parties; a representative of the Conseil National de l'Unité; a representative of civil society; the permanent secretary, who must belong to a political grouping different from that of the President of the Republic.

24. New difficulties arose when UPRONA protested against the election as President of the National Assembly of Jean Minani (FRODEBU), accusing him of having instigated violence after the 1993 coup d'état. UPRONA ordered Prime Minister Kanyenkiko to resign if Minani remained in office. Conflicts continued to develop within UPRONA when in January 1995 Kanyenkiko was expelled from the party and his resignation as Prime Minister was requested. "Dead city days" were organized in Bujumbura, which returned to a state of relative calm after the resignation of Kanyenkiko and the appointment of a new Tutsi Prime Minister, Antoine Nduwayo, a Tutsi from Bururi province.

25. On 5 November 1994, through the promulgation of Decree-Law 100/020, a national technical commission was established, charged with preparing a six-month national debate on the fundamental problems of the country. 4/ The Commission is to propose the issues to be discussed, which will include, under article 3 of the above-mentioned Decree-Law, the organization of the army and the security forces, the protection of minorities, educational and labour problems, and the independence of the judiciary.

26. A provisional report should have been presented to the President of the Republic by the end of June 1995. However, the 50 members of the Commission (25 Hutus and 25 Tutsis) seem to be unable to reach agreement. Thus it appears unlikely that sensitive issues other than those specifically expounded in article 3 will be included in the agenda for the debate. The national debate has, however, aroused the hope that it will make proposals for achieving lasting peace and stable government.

D. The administration of justice

27. The absence of an effective judicial system capable of applying and enforcing the law is perpetuating impunity and violence in Burundi. Multiple factors underlie the failure of the judiciary to restore order. 5/

28. One major factor is the paralysis of the three criminal courts of appeal which have been inoperational since March 1993 when the mandate of their assesseurs or conseillers expired and was not renewed. As a result, all criminal cases are now at a standstill. The Government is attempting to pass a new law which would upgrade the 17 Tribunaux de grande instance to courts of appeal, thereby bypassing the deadlock, and accelerating the processing of criminal cases.

29. Lack of judicial expertise also enfeebles the system. Very few professionals have adequate legal training: a recent university law graduate is eligible to become a magistrate. Similarly, the judges of the Tribunaux de résidence are recruited after finishing general humanities studies and receive just six months training, and 20 per cent of the magistrates of the high tribunals do not have law degrees. The possible establishment of an école de la magistrature is envisaged in order to provide the necessary specialization. It also seems that some European countries would be willing to assist in the training of legal professionals.

30. Shortages of human and material resources further weaken the system. There is a total of 464 magistrates, 21 prosecutors and 23 lawyers. In particular, the limited number of lawyers raises serious doubts as to the effective guarantee of the right to a defence, especially as there are now reportedly 4,000 people imprisoned in Burundi.

31. The Tutsi predominance in the judiciary further undermines the impartiality and independence of the system, as well as its credibility. According to the highest authorities of the country, the existence of "negative ethnic solidarity", whereby members of the same ethnic group protect each other, aggravates the partiality of the system. The application of an overwhelmingly Tutsi judicial system to mainly Hutu defendants creates tension and distrust.

32. The absence of a system to protect witnesses is an additional factor debilitating confidence in the judicial system. During the Special Rapporteur's mission, a man and his whole family were reportedly killed in Muyinga province after he had spoken out publicly on television to the President of the Republic during the campaign of pacification about armed groups in the province.

III. VIOLATIONS OF THE RIGHT TO LIFE

A. Political violence

33. That violence is employed to attain political ends is an alarming feature of the current political climate in Burundi. It serves to exacerbate the crisis and to undermine moves towards a peaceful, democratic settlement. Both Hutu and Tutsi hard-liners, who do not accept the power-sharing agreements

under the Convention on Governance, are resorting to the use of violence as a way of achieving their political ends. Effective impunity allows them to take such action whenever they disagree with a political decision. Thus, after the nomination of Jean Minani as President of the National Assembly, acts of violence and protest started in Bujumbura. The organization of "dead city days" by Tutsi militia reportedly caused an estimated 50 casualties. After his removal and the election of Leonce Ngendakumana as President of the National Assembly, on 12 January 1995, the capital returned to normal. The removal of Prime Minister Kanyenkinko was also achieved using the same violent means. After the announcement that Kanyenkinko had been expelled from UPRONA (a decision reportedly considered by Kanyenkinko to be null and void), the organization of "dead city days" by UPRONA hard-liners and a call to overthrow the Government led to the replacement of Kanyenkinko by A. Nduwayo. After Nduwayo's nomination, the capital once again returned to a state of relative calm.

34. In January 1995, Clement Ndabigarengesere, administrator of Bwambarangwe commune (Kirundo province), Serge Muyanda, administrator of Mubimbi commune (Bujumbura province) and Severin Bigindavyi, the provincial primary school inspector for Muyinga province, were reportedly murdered.

35. Later that month, on 26 January 1995, the governor of Muyinga province, Mr. Fidele Muhizi, was reportedly stabbed in Gasorwe commune by an unidentified man. According to information received, he was trying to restrain the activities of armed gangs in the province.

36. On 11 March 1995, Ernest Kabushemeye, the Minister for Mines and Energy, a Hutu and president of the Rassemblement du peuple Burundais party (RPB) was killed. On 13 March, Colonel Lucien Sakubu, former major of Bujumbura and a retired Tutsi army officer was kidnapped and found dead two days later in the suburb of Kimana in Bujumbura. Such assassinations of members of the Government and of the administration have aggravated the political turmoil in the country.

B. Impunity

37. Effective impunity generates political violence and is a serious destabilizing element in all contexts of the Burundi socio-political system. Respect for the rule of law is essential to maintain order and stability and to protect human rights in any country. Impunity encourages and perpetuates the mass violation of human rights. There have been periodical mass killings, but extremely few perpetrators have been brought to justice. 6/ Furthermore, impunity is an obstacle to democratic development and peace negotiations (see E/CN.4/Sub.2/1992/NGO/20), and makes reconciliation difficult. This culture of impunity has led to the emergence of arbitrary killings and has contributed to the uncontrollable spiralling of violence.

38. The systematic absence of investigation, either civil or military, into violations of the right to life facilitates impunity. Investigations are rarely conducted, and when they are, they do not lead to the appropriate convictions or penalties. The following cases illustrate this point.

(a) In August 1994, a staff member of UNHCR was killed in his home, in Kirundo, allegedly by military personnel. The investigation has been inconclusive.

(b) On 9 March 1995, two children, aged 9 and 13, were killed in the Majuri (Ngozi) refugee camp, allegedly by a gendarme. The investigation has not yet produced any results.

(c) On 11 June 1994, between 150 and 200 refugees were killed in Kiri, (Kirundo). The investigation has not led to any results.

(d) A commission of inquiry set up in December 1993 by the Government to investigate the events of October 1993 failed to carry out any investigations.

(e) Another example of impunity is the case of nine Burundi army officers, allegedly involved in the 1993 coup d'état, who are being held in custody in Zaire (E/CN.4/1995/67, paras. 195-198) and Uganda. In accordance with the extradition agreement between the Great Lakes countries, of 21 June 1975, the Government with which the request is lodged may order the accused person to be remanded in custody, while the requesting Government makes a formal application for extradition. The Government of Burundi requested the extradition of the officers and they remained in custody in April 1994, but the formal application for extradition was never completed. Investigations were paralysed by lack of political and diplomatic will. Fears that the names of high governmental and military authorities might come to light if the officers speak, may have led some influential groups to exert pressure in order to hinder the extradition process.

39. The Special Rapporteur was informed that several commissions of inquiry had been set up to investigate some of the killings which had occurred in the country. However, the effectiveness of such commissions in identifying perpetrators and bringing them to justice has been widely questioned.

Incidents in the provinces of Karuzi and Muyinga

40. According to information received by the Special Rapporteur, towards the end of March 1995, Burundi troops, with the help of internally displaced persons and Tutsi gangs, killed a number of Hutu civilians, mainly women and children, in the province of Muyinga in the course of operations to disarm civilians. Reports from non-governmental organizations and eye-witness testimonies estimate the number of victims at between 200 and 400. The army, however, states that only 20 people were killed.

41. In order to clarify the incidents, the Prime Minister appointed a commission of inquiry, which concluded, inter alia, that during army operations against gunmen who had infiltrated into the communes, innocent victims, the majority of them women and children, had been killed. During the operations, however, no firearms were found. The commission concluded that a total of 62 persons had been killed in Gasorwe in Muyinga province and that 158 persons had been killed in Karuzi province. It is not known if any of the

alleged perpetrators have been brought to justice. Reportedly, no steps have been taken to compensate the families of the victims and to prevent similar events occurring.

Incidents at Kamenge

42. On 25 April 1995, at least 24 people died as a result of confrontations during a military operation to disarm civilians. Among those killed were two children, aged three months and eight years, and one woman. The casualties were reported to have occurred in the zones of Taba, Twinyoni, Songa, Gikizi, Heha, Mirango I, Mirango II, Winterekwa and Gituro. According to the army, they were killed by stray bullets. The establishment of a commission of inquiry into these events was announced, but no concrete results have been forthcoming. The Special Rapporteur visited the suburb of Kamenge three days after the incidents took place and received the testimonies of eye-witnesses of human rights violations. He also interviewed the civil and military authorities. According to the military authorities interviewed, one armoured car was used in the operation, the victims killed were buried in backyards and no officials came to inquire into the events or verify the identity of the persons killed. Only one firearm was found in the operation.

C. "Ethnic cleansing"

43. Early in 1994, "ethnic cleansing" operations began in Bujumbura. The aim of this "ethnic cleansing" is to segregate and polarize the two main ethnic groups and to prevent their peaceful coexistence. Such operations, which range from simple intimidation or low intensity attacks, to the killing of Hutus and to planned army operations to drive Hutus out of neighbourhoods, increase the climate of fear and social insecurity.

44. Operations to disarm the civilian population in Hutu or mixed suburbs of Bujumbura, and in the interior of the country, have been a principal tool of "ethnic cleansing". Fear of further attacks has forced the Hutus to flee the capital, such that Bujumbura may now be referred to as being quasi mono-ethnic.

45. Reportedly, Hutu intellectuals, teachers, administrators and provincial governors have been killed since the beginning of the crisis. Ernest Kabushemeye (Minister of Mines and Energy), Fidele Muhizi (Governor of Muyinga), the administrator of Bwambarangwe and the administrator of the district of Kanyonsha, are a few examples. According to information received, five Hutu governors have been killed since the beginning of the crisis. Moreover, assassination attempts were made against Simon Ntamwana, the Catholic Bishop of Bujumbura and Sylvestre Gahungu, the former administrator of Kirundo district.

Events in Bwiza and Buyenzi, 24-25 March 1995

46. On 24-25 March 1995, an attack was conducted in the ethnically mixed suburbs of Buyenzi and Bwiza. The army, with the assistance of Tutsi militia, allegedly entered the suburbs searching for arms. The attack caused hundreds of deaths and made more than 30,000 persons (mostly Hutus but also a number of Zairians, Tanzanians and other African nationals) flee to the town of

Uvira (Zaire) and to the suburb of Gatumba (10 km from Bujumbura). The Special Rapporteur visited the affected areas of the suburbs of Buyenzi and Bwiza and saw many destroyed dwellings. He also visited the camp for internally displaced persons at Gatumba, where many victims of the Buyenzi and Bwiza incidents have sought refuge, and received the testimony of a number of such victims. According to their testimony, army personnel and members of the Gendarmerie indiscriminately killed women and children. Zairians and Tanzanians were among those killed. Buyenzi and Bwiza were the last two ethnically mixed suburbs of Bujumbura. At present, there remain only two suburbs, in Bujumbura, Kamenge and Kinama, that are mostly Hutu populated. Although some of the people have returned to the suburbs, most of them remain in Uvira (Zaire) and the suburb of Gatumba.

D. The use of the media as a means of inciting violence

47. The media are recognized in Annex I to the Convention on Governance as an element of danger for the stability of the country, although they have an enormous responsibility in promoting the peaceful resolution of the political crisis.

48. The written press circulates mainly in the capital. 7/ Despite its limited diffusion, it has a profound impact on readers. The audiovisual media have a broader influence and are more commonly used than the written press. 8/ It appears that the Burundi press conveys opinions rather than news. Such opinions tend to be linked to the defence of a political or ethnic interest and sometimes distort, exaggerate and sensationalize the news. In general terms, the Burundi press can be perceived as a low quality press which reports rumours and uses an unprofessional tone. The manipulation of information which exacerbates ethnic problems, has become a means of inciting social unrest. The following are examples of headlines, taken from various newspapers, which illustrate this point.

> "Never forget that our final objective is to chase all the Hutu extremists out of power." "United States Ambassador Robert Krugger is a liar." First page headlines, Le Carrefour des Idées, No. 51, 8 March 1995.

> "What is Abdallah doing in Burundi? Chase away this little Moor. We want no more of this Berber. Let him be gone by Monday." First page headlines, Le Carrefour des Idées, No. 52, 13 April 1995.

> "A man of double-speak, creator of terrorist gangs, Sylvestre Ntibantunganya no longer has the necessary credibility to continue at the head of our country." First page headlines, Le Patriote, 26 April 1995.

> "Le Carrefour des Idées is offering a prize of one million Burundi francs to the person who brings in the head of Léonard Nyangoma or Festus Ntanyungu on the end of a spear." First page headlines, Le Carrefour des Idées, No. 47, 28 October 1994.

> "Mitterrand was a nazi." ... "One might ask if he has not seen the opportunity in Rwanda of realizing his youthful dream of committing

genocide - whether it be against the Batutsi of Rwanda or the Jews is a matter of little importance!" First page headlines, L'Etoile, 21 November 1994.

49. The leitmotif of this extremist press is not information but political confrontation and the arousal of ethnic hatred through constant accusations and defamatory statements. Nevertheless, it should be stressed that there are also newspapers that demonstrate some professionalism and objectivity; their work should be encouraged.

50. While it is difficult to determine who finances the extremist media, multiple reliable sources suggest that Léonard Nyangoma, President of the Conseil National pour la Défense de la Democratie (the National Council for the Defence of Democracy) (CNDD) is behind Le Temoin, while ex-President Bagaza supports La Nation and Le Patriote. The main person responsible for the publication of Le Carrefour des Idées is Juvénal Madirisha, its Editor-in-Chief.

51. The influence of the media on social behaviour in Burundi must be seen in the cultural context of oral traditions in a rural society. Even though newspapers shape nothing more than rumours in written form, once a rumour is legitimized in print it is perceived as the truth by a certain part of the population. More troubling is the effect of radio: whatever is heard on the radio is understood to be the word of the leader (umukuri) and is rarely questioned. It should not be forgotten that for 30 years the media was under the authoritarian control of the State, reflecting the ideology of the ruling party at that time, and afforded no opportunity for criticism or refutation of official views.

52. In addition, the lack of adequate training of most journalists and the lack of a professional code, combined with scarce economic and material resources, hinder the development of a more objective and informative press. The closure of the school of journalism in 1991 and the delay in the establishment of a communications department at the university 9/ have also lead to the deterioration in the standards of journalism in Burundi.

53. Article 26 of the Constitution 10/ and Decree-Law No. 1/39 of 26 November 1992 regulate the press in Burundi. A new draft law on this subject is to be presented shortly to the National Assembly for approval. The draft law details the rights and obligations of media professionals, regulates the role of the National Council on Communication and establishes rules for the publication and dissemination of information. A section of the draft law is devoted to crimes of the press. Specifically, under article 57 it is a criminal offence to publish injurious or false information, or to incite racial or ethnic hatred. 11/ At the time of the preparation of this report the draft law had not yet been approved. However the absence of the rule of law and the passive role played by the National Council on Communication which should act as a filter for defamation in the press, aggravates the problem. Coercive measures need to be enforced against press crimes.

E. Alleged perpetrators of violations of the right to life

54. Hutus and Tutsis are at the same time victims and perpetrators of violations of the right to life. Because of the complexity of the situation, the ethnic origin of the victim is often the only indicator of the identity of the perpetrators of an attack. Moreover, owing to the climate of fear and the manipulation that is taking place in the country, witnesses are extremely reluctant to come forward.

1. The armed forces and the Tutsi militia

55. The army is composed of between 15,000 and 20,000 men, including 5,000 members of the Gendarmerie. It is responsible for the defence of the country and for restoring public order. According to information received, in little more than two years the military has tripled its personnel.

56. All sources consulted agree on the quasi monoethnic composition of the army. Predominantly Tutsi, the army has recruited more on the basis of ethnicity than on the basis of aptitude. This has provoked grave suspicions that the army is prejudiced, a fear fuelled by the fact that operations to disarm civilians are carried out mainly against Hutus, although arms are rarely found during such operations. In the incidents at Kamenge where at least 24 persons were killed, only one weapon was found. Envisaged change in the recruitment policy to extend a quota to the Hutu majority has become one of the most sensitive issues which will have to be considered in the national debate.

57. While it cannot be denied that the army has been targeted by Hutu armed groups, it is also true that it is responsible for grave violations of the right to life. Thus, on 9 May 1994, 52 persons were reportedly killed by the army while pursuing armed civilians in the Gashorora region outside Bujumbura. According to the military authorities, the perpetrators of this act would be punished. However, to date no trial has yet begun. In July 1994, a grenade was thrown and shots were fired against people attending mass in a church in Cendajeru (Ngozi), reportedly by men in military uniforms. A total of 45 persons were killed.

58. Tutsi militia, reportedly supported by ex-President Bagaza, known as Sans Echec ("without check") or Sans Defaite ("without defeat"), have been seen colluding closely with the armed forces, for example, during the operations to disarm civilians at Bwiza and Buyenzi. Internally displaced persons have been also seen cooperating with the Sans Echec and the military. It has been reported that, on the night of 27-28 January 1995, a group of Sans Echec, attacked the centre of town of Muyinga together with internally displaced persons from Mukoni and Muyinga. During these events, three persons were killed, and 26 houses were set on fire. On 11 February 1995, a group of Sans Echec members reportedly killed one person in Mukoni. It has also been alleged that one of the perpetrators was dressed in military uniform. The Sans Echec are specially active in Bujumbura, in particular during curfew hours, allegedly with the complicity of the armed forces.

2. Hutu armed groups

59. Armed opposition groups were created in the 1980s, when the Party for the Liberation of the Hutu People (PALIPEHUTU), was founded among the Burundi refugee community in Rwanda and Tanzania. This armed opposition movement, whose militants have at times been referred to as "tribal terrorists", 12/ is well organized and has received military training. The PALIPEHUTU guerrilla movement, which advocates the overthrow of Tutsi rule, has undertaken violent action against Tutsi targets, under the slogan "Power to the Bahutu".

60. PALIPEHUTU is allegedly responsible for the massacre of Tutsis in Ntega commune in 1988. According to information made available to the Special Rapporteur, infiltrations of PALIPEHUTU militants into the northern provinces continue to produce casualties. PALIPEHUTU gunmen have been active in Garsorwe commune in the province of Muyinga, specifically in the locations of Masasu, Gikwiye, Kagugwe, Karambo, Kinama, Munyinya and Kizi, where regular clashes between PALIPEHUTU and the army are reported.

61. A large number of Hutu armed gangs are also reported to be active in the province of Cibitoke, where a low intensity civil war is taking place. According to information received, on 21 March 1995, Hutu armed gangs took control of Mabayi Colline, Cibitoke. During this incident 15 members of the army were killed. The number of civilians and gunmen killed in the confrontation is unknown. In October 1994, hundreds of Tutsi were reportedly killed in Tangara district (Ngozi) by Hutu armed gangs.

62. Hutu armed gangs have also been held responsible for various ambushes, including one which resulted in the death of a South African journalist and three Belgian nationals, although many other sources have pointed to the army as responsible for those particular killings.

63. The Conseil National pour la Défense de la Démocratie (CNDD), headed by former minister Leonard Nyangoma, seems to be behind Hutu armed groups. Its armed wing, the Front pour la Défense de la Démocratie (FDD), could be responsible for attacks on army points. This group operates from the east of Zaire and reportedly has links with former Rwandan government forces and the Interahamwe Hutu militia.

64. It is reported that the FDD has taken hold among the new Burundi refugees in Zaire. The ethnic affinity of the Rwandan and Burundi refugees in Zaire is allegedly promoting cooperation between Burundi Hutu armed groups and the Interahamwe militia. Reportedly they have been seen operating together in attacks against army stations in Cibitoke province. Allegedly, members of the former armed forces of Rwanda (FAR) and Rwandan militia in Zaire, who control the refugee camps, are training youths for incursions into Rwanda and Burundi. Such cross-border raids are specifically aimed at increasing instability by creating tension in local communities.

65. Arms used by the militia and the armed gangs are cheap and of a mediocre quality. Apart from armes blanches (weapons with blades), they possess firearms and grenades, which are easily concealable. Reportedly, it is not

clear where the arms come from, but several sources have allegedly suggested they originate in China, France, South Africa, Zaire and Eastern Europe. 13/

IV. ISSUES OF SPECIAL CONCERN

A. Refugees, and internally displaced and dispersed persons

Refugees

66. The complexity of the refugee situation in Burundi stems from the fact that, at the same time as producing refugee flows, the country is receiving refugees from other countries of the region, mainly Rwanda, and Burundi returnees who had left the country in previous periods of violence.

67. After the coup d'état of 1993, around 670,000 persons fled Burundi and sought refuge in Rwanda, Tanzania and Zaire. Most of them returned spontaneously at the beginning of 1994. However, it is estimated that there are still some 6,000 Burundi refugees in Rwanda, 62,000 in Tanzania and 136,000 in Zaire. Influxes of Burundi refugees, mostly Hutus, into Uvira in Zaire have continued after the "ethnic cleansing" operations that took place in Bujumbura from March to September 1994, and in March 1995.

68. Following the events in Rwanda in 1994, some two million Rwandans fled, mainly to Tanzania and Zaire, and to a lesser extent to Burundi. There are approximately 284,000 Rwandan refugees in Burundi, mainly in the northern provinces. In Muyinga, the Ntamba camp holds some 33,000 refugees and the Mugano camp around 36,000. In Kirundo province, 27,000 persons are concentrated in the Rukuramigaho camp, while Ngozi province has some 97,018 refugees, distributed in the Magara, Ruvumu, Kibezi and Majuri camps. However, there continues to be a persistent movement of refugees entering Burundi, or in transit on their way to Tanzania. According to information brought to the attention of the Special Rapporteur, contrary to the situation in the refugee camps in Zaire, Rwandan refugees in the Burundi camps are not armed, there are no militia leaders, and there seem to be no soldiers of the former armed forces of Rwanda (FAR).

69. Rwandan refugees in the Burundi camps have been the target of attacks and violations of the right to life on several occasions:

(a) One of the most serious incidents took place on 11 June 1994 in Kiri (Kirundo), when armed men attacked a refugee transit centre and killed at least 96 refugees. The complicity of the army and its passive reaction during the incidents have been reported.

(b) On 13 July 1994, 30 refugees were killed in Kidundiri, Kabaroro commune (Kayanza), after being told to leave by Burundi soldiers.

(c) On 16 July 1994, 40 refugees, mainly women and children, were massacred, reportedly by armed men in military uniforms, in the Cendajuru chapel in Kayanza.

(d) On 29 September 1994, a group of 11 Rwandan refugees, 8 men, 1 child and 2 women, were reportedly killed by Tutsi gunmen and members of the Front Patriotique (Rwandan Patriotic Front) (FPR), upon their arrival at Gatare, Muyinga.

70. In this context, it is to be noted that investigations initiated into the killing of refugees have not reached any conclusions.

71. On 30 March 1995, following an attack in the Majuri camp by armed men in military uniforms, during which 12 refugees were killed, some 30,000 to 35,000 refugees from Magara camp fled towards the Tanzanian border. Such attacks are a source of concern to the Special Rapporteur. Because of the lack of security in the refugee camps not only are the lives of refugees in danger, but also those of humanitarian relief personnel. Other refugees started leaving the Ruvumu, Majuri and Ntamba camps but they gradually returned after being informed that the Tanzanian border had been closed. According to the refugees themselves, this massive flow was not politically motivated but was a spontaneous result of fear, due to the deteriorating security situation and rumours of possible further attacks. Radio reports of the evacuation of foreigners from Burundi also influenced the refugees.

72. The Special Rapporteur is also concerned by information he has received relating to cases of refoulement of Burundi refugees by the authorities of neighbouring countries. He wishes to draw the attention of Governments in the region to their obligations to grant asylum. In this respect, the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region, held in Bujumbura from 15 to 17 February 1995, encouraged countries hosting refugees from the Great Lakes region to continue to assist refugees and grant asylum in accordance with the 1951 United Nations Convention relating to the Status of Refugees, and its 1967 Protocol, the 1969 OAU Convention relating to the Specific Aspects of Refugee Problems in Africa and the 1981 OAU Charter on Human and Peoples' Rights. The inviolability of the right to life should be the basis for granting asylum, despite the severe burden that refugee populations place upon the receiving countries.

73. Owing to the similar ethnic composition of the population, and the identical geographical, economic, social and political factors that have shaped the history of Rwanda and Burundi, events in one country provoke immediate repercussions in the other. One example of this regional influence is the events which occurred in the Kibeho camp (Rwanda). From 18 to 22 April 1995, some 2,000 internally displaced persons were reportedly killed by Rwandan military personnel in Kibeho camp, Rwanda. 14/ As a consequence, refugee camps in Burundi were once more inundated by people fleeing the violence in Rwanda and seeking refuge from persecution. Such events also undermined the hopes of Rwandan refugees in Burundi for safe repatriation.

74. Returnees, former Burundi refugees who fled to other countries of the region in the past and who are returning to their country, stay temporarily in refugee camps until they can re-establish themselves in their communes of origin.

Internally displaced and dispersed persons

75. During the events of 1993 in Burundi, many people left their collines of origin to find refuge in a more secure location. Some 275,000 persons, mostly Tutsis, were displaced from their homes and settled in camps near military bases, which could guarantee their safety. A further 130,000, mostly Hutus, sought refuge in other communes and collines or went into hiding. The first group is referred to as "internally displaced persons", the second group as "dispersed persons".

76. While the first group has benefited from some humanitarian assistance and food aid, dispersed persons have not. This is to some extent understandable since the access of humanitarian aid to the displaced is facilitated by the fact that they have formed camps near military bases. The dispersed, who have sought refuge in the bush in order to stay as far away as possible from the central areas accessible to the army, are more difficult to reach, as they are generally not concentrated in camps. Reportedly, a number of the dispersed are returning to their communities of origin and in many cases they have resumed their activities. The displaced are still in the camps, either out of fear for their safety, or owing to the encouragement of Tutsi extremists and the army who, in maintaining them in the camps, perpetuate the instability in the country. While refugee camps are much better organized than those for the internally displaced, the harsh living conditions in both are disturbing. More details on the situation are provided in the report of the Representative of the Secretary-General on internally displaced persons on his mission to Burundi (E/CN.4/1995/50/Add.2).

77. In recent months international aid programmes have reportedly been cut off for the internally displaced, in an attempt to avoid dependency and encourage their gradual return to their collines of origin. As a result of this decision, tension and conflicts have ensued as food aid supplies continue to be given to refugees, mostly Hutus from Rwanda, and not to the internally displaced, mostly Tutsis from Burundi. In April 1995, in Muyinga, 18 World Food Programme trucks were pillaged by internally displaced persons. This created anger among the refugees for whom the food was originally intended. The risk of confrontations between refugees and internally displaced persons for this reason is increasing. Also, the preference for Tutsis in the distribution of humanitarian aid has become a politically sensitive issue for both Hutu and Tutsi extremists.

78. Reportedly, some of the internally displaced have been seen carrying out attacks together with the army and assisting it in operations to disarm Hutu armed gangs. It is alleged that during the incidents at Gasorwe in which 200 persons were killed, internally displaced persons were seen returning to the camps with personal belongings of those killed. Concerns have been expressed that the camps for the internally displaced are fostering the formation of Tutsi youth gangs.

79. A new Ministry for the Reintegration and Reinstallation of Displaced Persons and Returnees was created in October 1994. However, the action that this new Ministry will take to seek a solution of these problems remains to be seen. Complaints about the effectiveness of this Ministry were made to the

Special Rapporteur by internally displaced persons. Their complaints related to the lack of concrete measures to facilitate their return and reintegration in their communes of origin.

B. Women and children

80. In a country such as Burundi, stricken by considerable flows of refugees and displaced or dispersed persons with no immediate hope of a safe return to their homes, women and children experience particular suffering caused by their hazardous and precarious living conditions.

81. Often compelled to assume new responsibilities as heads of household in the absence of a husband or a brother, refugee and displaced women also face insecurity in the camps, such as promiscuity leading to acts of physical violence or sexual abuse. They often find themselves confined in a harsh environment, with little protection against the elements and deprived of most of their traditional household activities. Confronted with boredom, lack of training opportunities and psychological trauma resulting from "ethnic cleansing" or massacres against members of their family, these women share a very uncertain future.

82. Children and young persons form the vast majority of the inhabitants of the camps for refugees and displaced persons, which have a birth rate of at least 3 per cent. In some of the camps for displaced persons, children are allowed to share nearby school facilities in shifts with local children. But this is far from being the rule. In UNHCR refugee camps in the north of the country, a number of NGOs have attempted to provide some minimum educational facilities. The plight of refugee and displaced children is further aggravated by the fact that, owing to the widespread movement of populations, many families have been split up. Several hundreds of unaccompanied children who are attended in camps by relatives of the family or former neighbours, are the result. Like their mothers, children are a vulnerable group subject to malnutrition, diseases and various forms of physical violence, including sexual abuse and rape.

83. The situation of dispersed persons is generally even worse, as they usually keep away from urban centres or highways easily accessible to the military or armed militia. Women and children are particularly affected by the lack of proper shelter, food, health and sanitation facilities, and often pay a heavy toll during confrontations between the army and armed militia.

C. Youth violence

84. The participation of youths aged 12 to 20 in violent activities is particularly troubling. Some sources point out that they are under the influence of alcohol and drugs when they attack. In addition to the participation of young people in gangs, the Special Rapporteur is extremely concerned about the killings of schoolchildren and students which have been taking place, particularly in primary and secondary schools, but also at the University of Bujumbura.

(a) On 4 June 1994, Tutsi pupils threw grenades into Burengo secondary school, killing 5 Hutu schoolchildren and injuring 13 others.

(b) On 21 October 1993, in Gitega, Hutu gangs reportedly burned to death 70 Tutsi pupils from Kibimba secondary school. Before that incident, Hutu students had allegedly been injured and beaten to death.

(c) Also in the course of October 1993, Hutu gangs reportedly attacked a church in the village of Utifa, Gitega, as a result of which 30 persons were killed.

(d) From 8 to 11 August 1994, Tutsi youngsters were reported to have set up barricades in Bujumbura and to have thrown stones and grenades. As a result of these incidents 20 persons were reported dead.

(e) On 23 January 1995, a clash between Hutu and Tutsi students in Kamenge secondary school resulted in the death of a Hutu student.

(f) In February 1995, three students were killed in Bururi when a grenade exploded on the premises of a secondary school.

D. Killings of international humanitarian workers

85. The Special Rapporteur is especially concerned at the recent escalation of violence against international humanitarian workers, which has resulted in killings and death threats to United Nations officials and non-governmental organization workers. It is disturbing and regrettable that humanitarian personnel, who are trying to help the people of Burundi, are being targeted by extremists in an attempt to destabilize the country further and to deter humanitarian and military intervention by the international community. It is to be borne in mind that the Convention on the Safety of United Nations and Associated Personnel, adopted on 9 December 1994 (General Assembly resolution 49/59), establishes the obligation of ensuring their safety and security.

(a) In August 1994, a staff member of UNHCR was allegedly killed by military personnel in Kirundo. Reportedly, he had been investigating the massacre of more than 100 refugees in Kiri (Kirundo).

(b) On 17 February 1995, in Ngozi province, a United Nations volunteer working for the World Food Programme was allegedly taken to army barracks and beaten, together with a Burundi colleague, after they had been involved in an argument with an army officer who in the course of the argument had shot dead a second Burundi colleague.

(c) On 7 March 1995, in Kirundo, a grenade was thrown during the visit of a representative of the European Union, a Belgian national.

(d) Soon after leaving Burundi in April 1995, the Special Rapporteur was informed that a Greek staff member of the non-governmental organization Catholic Relief Services had been killed.

(e) Several attacks against the property of Médecins sans frontières/France in Kirundo led that organization to decide to suspend its operations in that part of the country.

86. In addition, death threats have been received by the UNHCR representative and the commander of the OAU observers mission in Muyinga. A letter containing such threats was brought to the attention of the Special Rapporteur during his mission. Death threats against Ambassador Ould Abdallah, Representative of the Secretary-General to Burundi, and Ambassador Robert Krueger of the United States have been published on various occasions in national newspapers.

V. CONCLUDING REMARKS

87. The Special Rapporteur is of the opinion that the human rights situation in Burundi is extremely serious, and results from the interaction of multiple factors. The principal causes are: the prevailing abuses against the right to life which have taken root among the two communities; the infernal spiral of violence into which Burundi has been plunged; and impunity. Neither the Burundi population, the main victim, nor the international community, a powerless witness of the frequent killings and massacres, seem capable of halting the violence. Rather, the level of violence appears to be manipulated by those who, de facto, control the situation in Burundi. It is these actors who have the principal ability to spread or stop the violence. The failure to take concrete measures with immediate effect by either the Burundi authorities or the international community in order to put an end to this violence and prevent its degeneration into genocide in Burundi has also contributed to shaping the present situation.

88. The Special Rapporteur is particularly concerned about the massacres and extrajudicial, summary or arbitrary executions among the civilian population, especially women and children, which have become an almost ubiquitous feature of daily life in Burundi. The pervasive violence generated by armed militias and bands, their increasing attacks against the armed forces and the resulting deaths amongst the military are further indicators of the general deterioration of the situation, and the prevalent insecurity in Burundi. This climate of violence is exacerbated by media incitement to racial hatred, particularly in the written press.

89. The Special Rapporteur is also worried by the paralysis of State institutions, particularly the judiciary, which is generating impunity and hence the perpetration of human rights violations, and by the obstruction of the implementation of the Convention on Governance agreed to on 10 September 1994 by the governing and opposition political parties. There appears to be a determined desire on the part of those who control the situation, the extremists from both sides, to return to the situation which prevailed prior to the coup d'état of October 1993, in which power was not regulated by universal suffrage and the rule of law, but by authoritarian domination resulting from a military coup or armed struggle.

90. A further matter of grave concern to the Special Rapporteur is the situation of refugees, and the displacement and dispersion of population in Bujumbura and throughout the country, which may in some instances be assimilated to "ethnic cleansing".

91. The Special Rapporteur is convinced that the difficult situation in Burundi cannot be tackled in isolation but must be considered in the context

of the regional conflicts which affect the countries of the Great Lakes region. The issues relating to the refugees and the internally displaced persons in the region, which have attracted the attention of the international community, are only one important part of the problem. The Special Rapporteur is of the view that the lack of regional early warning systems and of regional policies for the prevention of large-scale massacres and acts of genocide and for rapid international intervention when dramatic incidents occur reduces the effectiveness of the actions undertaken by the international community.

92. The Special Rapporteur is therefore of the opinion that, in the light of the extreme gravity of the human rights situation in Burundi, measures must be taken both at the national level, by those involved in the present crisis, and by the international community to halt the cycle of violence. Whilst some of these measures require to be implemented with the utmost urgency, others present longer-term objectives.

VI. RECOMMENDATIONS

A. The national authorities and the main actors in the present crisis

93. The Special Rapporteur considers it of the greatest importance to create a mechanism which would encourage confidence-building between the two main ethnic groups. Such a mechanism would aim at providing security and protection to all the people of Burundi. Within this context, it is important that a national police force be established that would be accepted by both communities and which would have as its main responsibility the protection of the civilian population. One of the priority tasks of the national police force would be to ensure the security and protection of people in universities, schools and refugee camps. If the Gendarmerie is considered as the most suitable body to become the national police force it should be given the requisite substantive training in order to enable it to fulfil the role of maintaining public order. However, all elements of the Gendarmerie who have been involved in summary executions, massacres or other grave violations of human rights should be excluded from the national police force. The relevant international standards developed by the United Nations, such as the Code of Conduct for Law Enforcement Officials, should be part of such training. Specialized squads should also be created in order to deal with the problems posed by increasing acts of terrorism on the part of armed groups and to disarm the population, without distinction. The judiciary police should be strengthened considerably and should undergo extensive training in order to become more professional.

94. All efforts recently initiated by the Government of Burundi to coordinate the functions of all the security forces responsible for ensuring law and order should be strengthened. The training programme for the security forces which is being implemented by the office of the Centre for Human Rights in Bujumbura should continue. It should take into account the need to provide specialized and distinct training to army officers and to police officers.

95. A national early warning system should be created which could intervene rapidly when killings and violence occur to prevent them degenerating into mass killings and genocide. Such a mechanism should be composed of members of

the national police, representatives of non-governmental organizations of Burundi, representatives of the vulnerable groups of the population and the notables (elders) of the collines. Sufficient resources should be allocated to such a mechanism, as well as the necessary communication equipment, to allow it to operate independently. An emergency plan should be elaborated covering the whole territory of Burundi with a transparent chain of command capable of identifying emergency situations at any given point in time as well as those who are responsible for any failures in the system.

96. The army should not be entrusted with the role of maintaining internal law and order. Its role should be confined to defending the territorial integrity of the country. Under no circumstances should the army use heavy weapons against the civilian population, as has been the case on several occasions in the neighbourhood of Kamenge in Bujumbura. General intelligence matters, other than those of a purely military character, should be entrusted to a national police force, which should be created.

97. The necessary measures should be elaborated and implemented in order to dismantle the militia operating in Bujumbura, in other towns and in the camps for internally displaced persons, in particular the groups known as Sans Echec and Sans Défaite. Furthermore, to tackle the violence in the rural zones, the Government should establish political dialogue with representatives of the guerilla forces and at the same time strengthen its fight against terrorists and criminal gangs.

98. The Government of Burundi should elaborate and implement without delay a policy to improve security, which would enable the displaced and dispersed populations of Bujumbura and the rest of the country to return to their communes and would facilitate their reintegration and reinstallation. The international community should be ready to respond quickly to requests by the Government of Burundi for assistance in this matter. The authorities of Burundi should comply with the principle of non-refoulement and accord the right of asylum to refugees fleeing from neighbouring countries into Burundi.

99. A policy aimed at putting an end to "ethnic cleansing" should be adopted with the utmost urgency by the Burundi authorities and the necessary measures initiated in order to rehabilitate the ethnically mixed neighbourhoods of Bujumbura, such as Bwiza, and reinstall the different populations that used to live peacefully there. The role played by the Muslim community in the day-to-day life of those mixed neighbourhoods should be taken into account as a positive factor to overcome ethnic conflict. In addition, the Government should stop the programme to introduce residence cards which may result in institutionalizing the negative effects of "ethnic cleansing" operations.

100. Reform and transformation of the security forces, the judiciary and the administration of Burundi is needed in order to allow equal access to them for Hutus, Tutsis and Twa, so that they may come to represent the whole society, and hence enjoy the confidence of the population. A programme to this effect should be elaborated and implemented in phases, having regard to the sensitivities that such a reform is liable to create among the Tutsi community. The Commission established for the National Debate should deal with this issue as one of its main priorities and make the appropriate

recommendations. In so doing, the Commission should also consider the possibility of reducing the size of the army, which currently absorbs one third of the State budget (S/1995/157, para. 151).

101. Every citizen should have an equal right and opportunity to take part in the conduct of public affairs, directly or through elections which reflect the free expression of his/her will, and to have equal access to the public service, including the military and the judiciary (in accordance with art. 25 of the International Covenant on Civil and Political Rights). Such participation will help to foster mutual understanding and confidence. In this context a study should be carried out with a view to identifying concrete measures which would ensure equal access for all Burundi citizens, with due respect to the legitimate aspirations of the majority and guarantees of the rights and security of minorities.

102. A study should also be undertaken in order to enhance the provision of equal opportunities for the deprived sectors of Burundi society, including women and children. Special protection should be afforded to women and children, and special vigilance should be evinced regarding the respect of their fundamental human rights.

103. The Burundi authorities should urgently take the appropriate measures to ensure the functioning of the criminal courts, as well as the independence and impartiality of the judiciary. The Criminal Courts of Appeal, which have been inoperative since March 1993, should start functioning without any further delay. Interim measures should be taken to renew or appoint the assesseurs or conseillers to the Criminal Courts of Appeal until the Parliament adopts the new law under consideration. The Special Rapporteur would like to emphasize the need for the criminal courts of Burundi to establish the primary responsibility of the individual in violations of human rights. Individuals must take responsibility for their actions in accordance with the rule of law. Any principle or idea advocating collective responsibility and reinforcing the concept of "negative ethnic solidarity" should be outlawed.

104. The use of the media to disseminate injurious information and to incite racial or ethnic hatred should be duly punished as a criminal offence by magistrates of high integrity possessing specialized expertise in media matters. A special chamber of the court of Bujumbura should be created to deal with criminal offences emanating from the media. The international community could provide such magistrates as an interim measure.

105. Grave human rights violations committed by the military should be considered as criminal offences and not merely as military infractions. The victims or their representatives should be allowed to participate in military trials at which grave human rights offences are being judged.

106. The death penalty should be suspended until the judiciary system functions in a fair and impartial manner.

107. A system of compensation for the families of victims should be developed, as well as a system to protect witnesses and their families who participate in criminal investigations and give testimony. In this regard, the Burundi authorities could envisage the establishment of a special prosecutor's office

dealing with human rights matters. Such an office should be provided with the requisite human and financial resources to enable it to carry out its functions efficiently. The necessary reforms should be carried out in the criminal justice system of Burundi in order to allow the victims or their representatives to initiate an inquiry directly, without necessarily going through the Public Prosecutor as is the case at present. A post of examining magistrate (juge d'instruction) should be created to this end. Measures should be envisaged to provide to the victims lawyers of their choice. In this context, cooperation of bar associations of other countries having a similar judiciary system should be envisaged and encouraged.

108. The Government of Burundi could request assistance from the High Commissioner for Human Rights and the international community: specific voluntary funds could be established under the authority of the High Commissioner for Human Rights for the purpose of providing such assistance.

109. The National Council on Communication should take responsibility for ensuring that, whilst the necessary freedom of opinion and expression is protected, the dissemination of ideas of racial or ethnic hatred, or incitement to acts of violence, become offences punishable by law. A code of deontology should be elaborated and technical assistance should be provided by the international community so as to improve the standard of professionalism among Burundi journalists. In addition, a radio station should be created with the objective of broadcasting civic education programmes on peace and human rights to the Burundi population. The Special Rapporteur urges the leaders of all the political parties of Burundi to make an appeal through the national radio to all the people of Burundi to cease violence.

110. A national institution for the protection and promotion of human rights should be established, in accordance with the principles adopted by the United Nations. It could take the form of a national commission. Such an institution should be based on the recommendations of the Commission on Human Rights concerning the competence, responsibilities, composition, guarantees of independence and pluralism, methods of operation, status and functions of national human rights instruments. Such an institution should inter alia have special programmes for young people aimed at promoting the peaceful coexistence of the two ethnic groups in society. The representatives of non-governmental organizations and human rights defenders should be given special protection against acts of intimidation and reprisals, in accordance with Commission on Human Rights resolution 1995/75 of 8 March 1995.

111. A national conference, either within or separate from the framework of the National Debate, should be convened as a matter of urgency in order to examine the measures required to resolve the present political crisis and to put an end to violence and insecurity. All the political signatories of the Convention on Governance should participate, as well as other sectors who were not party to the Convention yet who play a determinant role in the present crisis. The United Nations and the Organization of African Unity could offer their good offices and act as mediators in the context of such a conference.

112. In view of the gravity of the human rights situation in the country, the authorities of Burundi should request the international community for

coordinated and dynamic cooperation capable of implementing realistically all the above measures including the establishment of an adequate legal framework in view of the exceptional character of such cooperation. One of the priorities of the Burundi authorities should be the ratification without further delay of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

B. The international community

113. It has become evident that the Government does not have the capacity to assure the right to life of its citizens, refugees or foreign personnel living in Burundi. The international community, which took an intense interest in the democratic elections and the tragic events of October 1993 and has followed the situation since then, cannot abandon Burundi. The international community should invest massively in order to address the structural causes of genocide, with a view to establishing measures to prevent its reoccurrence.

114. The problems of Burundi cannot be dissociated from those affecting the other countries of the region. Cooperation among the countries of the Great Lakes region should be expanded and strengthened. In addition, the United Nations, in collaboration with the Organization of African Unity, should establish an international monitoring programme in the Great Lakes region with a mandate to prevent massacres and genocide, as well as grave human rights violations. Such a mechanism should have the capacity for early warning and monitoring of the human rights violations and the arms traffic in the Great Lakes region. It would also be entrusted with the task of elaborating an emergency plan of action for rapid intervention in the event of massacres occurring in the region. Furthermore, an international conference of the Great Lakes region should be convened, under the auspices of the United Nations, to adopt measures necessary to deal with the problems affecting the countries of that region, so as to ensure peace, security and development. Particular attention should be devoted to the problems relating to refugees and the displaced, as well as the disarming of those populations.

115. The right to asylum and the principle of non-refoulement in accordance with the 1951 United Nations Convention on the Status of Refugees and the 1969 OAU Convention relating to the Specific Aspects of Refugee Problems in Africa should be applied in the countries of the Great Lakes region, specifically Rwanda, Zaire, Burundi and Tanzania. The inviolability of the right to life as the ground for requesting asylum should be borne in mind by these countries, which should foster solidarity concerning the refugee problem.

116. The Special Rapporteur places the greatest importance on the scrupulous implementation of the Convention on the Prevention and Punishment of the Crime of Genocide. He considers that whilst attention has been given to the repressive provisions of the Convention, its preventive aspects have not been duly taken into account by the States parties to the Convention. The Special Rapporteur is of the opinion that, in addition to the international commission of judicial inquiry to investigate the coup d'état of 21 October 1993 and acts of genocide, the States parties to the Convention should actively develop appropriate measures to prevent the acts of genocide that are in the process

of being perpetrated in the region. He recalls that article III of the Convention provides that acts such as "conspiracy to commit genocide", "direct and public incitement to commit genocide", "attempt to commit genocide" and "complicity in genocide" are punishable.

117. States should enforce Security Council resolution 978 (1995) urging them "to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda". Along these same lines, the international community should scrupulously enforce the international arms embargo instituted against Rwanda under Security Council resolution 918 (1994) of 17 May 1994. The Security Council itself should assess whether this resolution is still pertinent to the current situation in the region and take appropriate measures to deal with the regional problems posed by the events in Burundi in 1993 and in Rwanda in 1994. The Special Rapporteur is of the view that the jurisdiction of the International Tribunal for Rwanda should be extended to all the countries of the Great Lakes region. In this context, he wishes to draw the attention of the international community to the fact that the International Criminal Tribunal for the former Yugoslavia, established by the Security Council, has jurisdiction over the territories of all the countries of that particular subregion.

118. The Security Council should set in motion without delay the international judicial fact-finding mission foreseen in article 36 of the Convention of Governance of 19 September 1994, to investigate the coup d'état of 21 October 1993 and what the political partners have agreed to call without prejudice to the results of independent national and international investigations, as well as the various political crimes that have been committed since October 1993.

119. The Organization of African Unity which currently has 47 military observers stationed in Burundi with the agreement of the Government, should, in addition to the planned expansion of the observer mission with 20 additional observers, contemplate further increasing the number of observers so as to facilitate the effective monitoring of Burundi's 114 communes on a regular basis. The scope of the mandate and terms of reference of the OAU observer mission should also possibly be broadened so as to assist in preventive activities and in confidence-building, and the appropriate means to ensure its security should be provided in close cooperation with the Burundi authorities. In addition, the mission should be an integral part of the Burundi national early warning system to prevent human rights catastrophes and of the international observatory of the Great Lakes region.

120. The Special Rapporteur is of the opinion that the international presence in Burundi has a preventive effect. He recommends that the office of the Representative of the Secretary-General, as well as the office of the Centre for Human Rights, should be strengthened. The High Commissioner for Human Rights and the international community should continue to provide technical assistance and human and material resources for the administration of justice.

Foreign magistrates, judges, investigators, prosecutors and human rights specialists could assist in this endeavour and the judicial police should be provided with further training. International cooperation to strengthen the administration of justice should be at a level capable of setting in motion without delay inquiries on human rights violations until the national resources and infrastructure are developed and can proceed without outside assistance. The international community should recall that prevention is better than cure and, bearing in mind the experience of Rwanda, help to deploy the necessary resources for prevention, before it is too late. The observers to be deployed by the High Commissioner for Human Rights, as the first phase of the human rights monitoring programme in Burundi, could assist the judiciary to ensure that it functions more effectively. The human rights observers should benefit from measures designed to guarantee their security and be provided with the necessary logistical support to enable them to carry out their mandate faithfully. The police should also be assisted with adequate resources and equipment.

121. All necessary logistical and human resources should be provided to the Special Rapporteur on the situation of human rights in Burundi, appointed by the Chairman of the Commission on Human Rights pursuant to Commission resolution 1995/90, in order to enable him to carry out the mandate entrusted to him by the Commission. Cooperation between the Special Rapporteur on the situation of human rights in Zaire, the Special Rapporteur on the situation of human rights in Rwanda, and the Special Rapporteur on the situation of human rights in Burundi should be strengthened so as to facilitate a continual analysis of developments in the region.

Notes

1/ Report to the Secretary-General of the preparatory fact-finding mission to Burundi (S/1995/157, paras. 31-36). The Secretary-General decided to send a preparatory fact-finding mission to Burundi in response to a note from the President of the Security Council (S/26757 of 16 November 1993) in which he was encouraged to dispatch a small United Nations team to Burundi for fact-finding and advice with a view to facilitating the efforts of the Government of Burundi and the Organization of African Unity.

2/ For a detailed description, see the report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng (E/CN.4/1995/50/Add.2).

3/ See Minority Rights Group International Burundi, Breaking the Cycle of Violence, p. 18.

4/ The international community has repeatedly reaffirmed its support for the holding of a national debate. See Declaration of the European Union of 19 March 1995. See also Statements on the situation in Burundi by the President of the Security Council S/PRST/1995/10 of 9 March 1995 and S/PRST/1995/13 of 29 March 1995.

5/ The judiciary, which is regulated in art. 140 and following of the Constitution, arts. 34 and 35 of the Convention of Government, and Decree-Law 100/008 of 21 December 1994, is composed of special and ordinary jurisdictions. The special jurisdictions are the Tribunaux du Travail, de Commerce, la Cour Administrative, la Cour des comptes and Conseils de Guerre and la Cour Militaire. The ordinary judicial institutions are: the Supreme Court, sitting in Bujumbura; three courts of appeal, located in Bujumbura, Gitega and Ngozi; 17 Tribunaux de grande instance based in the provinces and 123 Tribunaux de résidence, located in each commune.

6/ The United Nations President of the Security Council, in a statement made on behalf of the Council on the situation in Burundi (S/PRST/1995/13) warned that those who commit crimes against humanity are individually responsible for their crimes and will be brought to justice.

7/ Tutsi newspapers are generally written in French. Hutu newspapers are written in French when they are directed towards the international community and in Kirundo when they are intended to reach the rural population.

8/ An extremist radio station, Radio Rutomorangingo, similar to Radio Mille Collines of Rwanda, reportedly stopped broadcasting in 1994. However there are unconfirmed reports that it may be continuing to broadcast from North Kivu in Zaire.

9/ Reporters sans Frontières, Rapport de la Mission au Burundi, 1994.

10/ Article 26 of the Constitution reads: Every person shall have right to freedom of opinion and expression, in respect of public order and the law. The freedom of the press shall be recognized and guaranteed by the State. The National Council on Communication shall watch over the freedom of audio-visual and written communication, in respect of the law, public order and good morals. The Council has, to that effect, the power to make sure that the liberty of the press is respected and that the political parties have fair access to the State media. This Council shall also advise the Government on communication matters.

11/ "Without prejudice to the pertinent provisions of the Penal Code, a director, editor or owner who publishes ... communiqués, appeals or announcements that are an incitement to crime, blackmail or fraud; racial or ethnic hatred; injurious or offensive defamation of public or private persons ... are punishable by a maximum of two months penal servitude and a fine of 10,000 francs or one of these punishments only."

12/ See "Burundi between mistrust and democracy" in Swiss Review of World Affairs, January 1993.

13/ Human Rights Watch Arms Project, Rwanda/Zaire, "Rearming with impunity", May 1995.

14/ The establishment of an independent international commission of inquiry into the events at Kibeho camp was announced on 27 April 1995 by the President of the Rwandese Republic. The Commission concluded that there was enough evidence to believe that unarmed internally displaced persons had been killed by Rwandan military personnel. The incidents, according to the Commission, did not result from planned action by the Rwandan authorities, but it stressed that the incidents could have been prevented. No estimate of the number of victims has been given by the Commission.